UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL
E/CN.4/2001/NGO/67
30 January 2001

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Item 11(c) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: FREEDOM OF EXPRESSION

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 December 2000]

* This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

GE.01-10739

ENG

Freedom of assembly, the Public Order Ordinance and
academic freedom in Hong Kong SAR

1. On August 15, 2000, five university students in Hong Kong Special Administrative Region (Hong Kong SAR) of the People's Republic of China were arrested under the Public Order Ordinance legislation. They were accused of taking part in, and helping organise, an illegal assembly and obstructing police duties on June 26, 2000. On 28 September 2000, five university students were arrested for unauthorised assembly and for their part in a protest against tuition fees on April 20, 2000. Three of them were also among the five students arrested in the former case.

2. The arrests of these students aroused widespread public concern. Many local human rights organizations, the Hong Kong Bar Association and scholars made statements against the arrests and questioned whether they were a politically motivated attempt to target people protesting against the government. They expressed concern over the use of the Public Order Ordinance to suppress dissent. They pointed out that the Public Order Ordinance is a violation of freedom of assembly and should be amended.

3. The provisional legislature amended the Public Order Ordinance in the middle of the night, several hours after power was transferred from the British colonial administration to the SAR Government of China in 1997. This law is extremely important in ensuring people's freedom of expression and assembly. Its rapid change gave the impression that the desire and intent of the incoming administration was to alter the Public Order Ordinance to use in control of demonstrations, rallies, and organisations that it feels might be politically threatening.

4. The amendments to the Public Order Ordinance mean that:

   a. Organizers of demonstrations with more than 30 persons are required to obtain a "notification of no objection" from the police at least seven days before a demonstration. This notice requirement is very harsh, although police may exercise discretionary power. In effect, it is an indirect permit system, although the government denies this. It empowers the police to reject an application on national security grounds. Under the guidelines, the subject matter of a demonstration – for example, whether it advocates independence for Tibet or Taiwan – can be taken into account. Thus, political conviction, rather than conduct, is made grounds for limits to the freedom of expression.

   b. Police have a wide range of powers to impose conditions on and stop demonstrations. Article 15(2) states that, "The Commissioner of Police may, where he reasonably considers it necessary in the interests of national security or public safety, public order or for the protection of the rights and freedoms of others, impose conditions in respect of any public procession notified..." Though most demonstrations have been allowed to proceed, they have experienced

excessive policing. Demonstrators have often been restricted to "designated demonstration areas", out of sight and hearing ranges of their targets, behind heavily guarded barricades. Demonstrators usually find this unacceptable, which has often resulted in conflict, arrest and prosecution.

c. The maximum penalty for failure to notify the police of a demonstration or rally is five years imprisonment. This is too harsh for an offense that should be decriminalised. Such an excessive penalty goes against all internationally accepted practices. It cannot be emphasised enough that there should be no prison sentence for such an infraction: the only "crime" is failure to get permission from the police to exercise one's freedom of expression and assembly.

5. Although the Department of Justice finally gave in to public pressure and decided not to prosecute the students charged under the Public Order Ordinance, the legislation in its present form denies people the right to express themselves and peacefully assemble. It transforms this right into a privilege granted by the police. The requirement to notify the police of a demonstration or rally must be separated from the giving to police the power to approve or disapprove of people's right to express their views.

6. A second area of concern for freedom of expression in Hong Kong SAR is threats to academic freedom by political agents. On July 7, 2000, Dr. Robert Chung Ting-yiu, Director of the Public Opinion Programme of the Journalism and Media Studies Centre at Hong Kong University (HKU), claimed that he had been politically pressured by Chief Executive Tung Chee-hwa, through a "special channel", to discontinue public opinion polls on Tung's popularity and the Hong Kong government's credibility. A week later Chung revealed that the "special channel" was the head of the university, Vice Chancellor Cheng Yiu-chung, and his deputy, Pro Vice Chancellor Wong Siu-lun. Although the two HKU administrators quickly denied the allegations, controversy immediately erupted over questions of government interference in the work of academics. As a result, the university set up a three-member panel to investigate Chung's claims. In August, the panel heard that Andrew Lo Cheung-on, a senior special assistant to the chief executive, had met with Vice Chancellor Cheng to discuss Dr. Chung's public opinion polls. Later Professor Wong met twice with Dr. Chung, and allegedly pressured him to stop the polls.

7. The panel report of September 1 stated that they found Robert Chung to be "an honest witness who was telling the truth in relation to the matters he is complaining about." However, the panel found the chief executive's senior special assistant to be a "poor and untruthful witness" and that neither he nor the vice chancellor "disclosed the full and truthful extent of what was said in [their] meeting..." They argued, "It is this failure to have open discussion through recognised channels that weighs heavily with the panel when considering whether these were illicit endeavours to silence Dr. Chung because of political considerations. We have no doubt that political consideration was the principal reason that motivated the [meetings]." The vice chancellor and his deputy resigned just before the university council met to vote on

whether or not to accept the panel's report. But because of Chief Executive Tung's refusal to testify and the lack of credibility attributed to Lo by the panel, questions remain unanswered about their roles.

8. Naturally, this episode has evoked concerns about academic freedom as well as guarantees to freedom of speech in Hong Kong three years after its sovereignty was transferred to China. Do academics, for instance, have the space to conduct opinion polls about the government and its leader? Is a mechanism for gauging the views of the people of Hong Kong, of feeling the pulse of the community, being restrained? Is an avenue for expressing one's views being suppressed? Most worrisome is that features of Mainland China's political culture are perhaps being imported, consciously or unconsciously, by Hong Kong's officials: a political culture built on suffocating control of dissent, giving the false appearance of political stability and consensus.

9. The Asian Legal Resource Centre calls upon the Commission to encourage the HKSAR Government to amend the Public Order Ordinance such that a notice of no objection from the police be no longer required before holding a public demonstration, and to limit the power of the police in regulating demonstrations.